FILE COPY

Office Supreme Court, U.S.
FILED
OCT 28 1960
JAMES R. BROWNING, Clerk

In The
Supreme Court of the United States

October Term, 1960
No. 422

COMMONWEALTH OF PENNSYLVANIA, NEW SHAWMUT MINING COMPANY, a Corporation, SEBASTIAN C. PUGLIESE and GRACE PUGLIESE, A. J. PALUMBO and SIGISMUNDA PALUMBO; RIDGWAY NATIONAL BANK, BRUCE ISAACSON and JOHN BELL, SUCCESSOR TRUSTEES UNDER THE WILL OF N. T. ARNOLD, and DEVONIAN GAS AND OIL COMPANY, Petitioner, Defendants and NEW YORK STATE NATURAL GAS COMPANY, Intervening Defendant,

Respondent

v.

CECIL B. HIGHLAND, JR., Trustee of the Penfield Coal and Coke Company, an out of existence corporation, and E. C. METZNER, LESSEE,

Petitioner

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

ROBERT A. DERBYSHIRE
Assistant Attorney General
JOHN SULLIVAN
Deputy Attorney General
ANNE X. ALPERN
Attorney General
Counsel for Respondent

State Capitol
Harrisburg, Pa.

Rose Printing Company, Law Printers, 207 Locust St., Harrisburg, Pa.

TABLE OF CONTENTS

Page

Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania:

Counter-Statement of Question Involved 2

Counter-Statement of the Case 2

Argument:

I. Where the Court of Last Resort of a State Has Determined the Issue of Title to Land, Does the Case Present a Substantial Federal Question 4

II. Petitioner Has No Standing To Impeach the Validity of the Deed of Its Lawful Representative to the Commonwealth 6

Conclusion 7

TABLE OF CITATIONS

Cases:

Dunham and Skout v. Kirkpatrick, 101 Pa. 36 (1882) 4

Stanley et al. v. Graham Production Company, Incorporated, 83 F. 2nd 489, 57 S. Ct. 115 (1936)

United Brick and Tile Company v. McKissick, 32 F. 2nd 426 (1929), 281 U.S. 677 4

Vrooman v. Harmon, 291 Pa. 12 (1958) 5

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1960
No.

Commonwealth of Pennsylvania, New Shawmut Mining Company, a corporation, Sebastian C. Pugliese and Grace Pugliese, A. J. Palumbo and Sigismunda Palumbo; Ridgway National Bank, Bruce Isaacson and John Bell, Successor Trustees Under the Will of N. T. Arnold, and Devonian Gas and Oil Company, Petitioner, Defendants and New York State Natural Gas Company, Intervening Defendant,

Respondent.

v.

Cecil B. Highland, Jr., Trustee of the Penfield Coal and Coke Company, an out of existence Corporation, and E. C. Metzner, Lessee,

Petitioner

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondent, Commonwealth of Pennsylvania, respectfully prays that the Petition for a Writ of Certiorari filed in the above entitled case be denied.

COUNTER-STATEMENT OF QUESTION PRESENTED

In the absence of any previous severance of the gas rights from the fee simple title to the land, either by express statement or by intent, did the conveyance from the receiver of the bankrupt corporation conveying all the right, title and interest of the bankrupt estate in said lands, include the gas estate therein.

COUNTER-STATEMENT OF THE CASE

In 1931 the Commonwealth of Pennsylvania purchased 3,784.35 acres of land from LeRoy W. Smith, Receiver of Penfield Coal and Coke Company. This sale was made pursuant to an order dated June 2, 1931 of the U. S. District Court for the Western District of Pennsylvania which sale was held and confirmed by the Court. The Commonwealth of Pennsylvania has been in possession of the lands from 1931 until the present time. The receiver was later discharged and the Corporation ceased to exist.

Prior to the conveyance to the Commonwealth of Pennsylvania, a predecessor in title had conveyed "all the coal, iron ore, lime stone, fire clay and other minerals", to a third party. Under Pennsylvania law this does not effect a severance of the gas and oil rights from the surface.

In the deed to the Commonwealth of Pennsylvania LeRoy W. Smith, Receiver, conveyed all his rights, title and interest to these lands, reserving only those mineral rights that had previously been conveyed to third parties (159b of the Supplemental Record). This language was contained in the petition of LeRoy W. Smith to the U. S. Court when he sought permission to sell the land (133b of the Supplemental Record.)

The Supreme Court of Pennsylvania held that the deed to the Commonwealth did not effect a severance of the natural gas rights from the surface and that such was not contemplated by the receiver of the U. S. Court (21a of Appendix A of Petition).

ARGUMENT

~~STATEMENT OF QUESTIONS INVOLVED~~

I. WHERE THE COURT OF LAST RESORT OF A STATE HAS DETERMINED THE ISSUE OF TITLE TO LAND, DOES THE CASE PRESENT A SUBSTANTIAL FEDERAL QUESTION?

The Petitioner conceded that the construction of Pennsylvania deeds is for the Courts of Pennsylvania (Page 9 of Petition). This is true as is also the principle that the sale of lands by a receiver is governed by the laws of the State in which the sale takes place: *United Brick and Tile Company v. McKissick*, 52 F. 2nd 426 (1939), 284 U. S. 677.

The Supreme Court of Pennsylvania has applied well established principles of Pennsylvania law to determine that the conveyance from LeRoy W. Smith, Receiver of the Penfield Coal and Coke Company to the Commonwealth of Pennsylvania did not effect a severance of the gas rights and that these gas rights became the property of the Commonwealth of Pennsylvania. The decisions of the Pennsylvania Courts have established that gas and oil rights are not severed from the surface unless that intention is specifically set forth. This has been the rule of law since the early case of *Dunham and Short v. Kirkpatrick*, 101 Pa. 36 (1882), including the more recent case of *Yuscavage v. Hamlin*, 391 Pa. 13 (1958).

It is true that the petitioners must rely on this principle of Pennsylvania law, if they are to claim the ownership of the gas. It is significant that the deed into petitioner conveyed only title to the surface of the land (114b of Supplemental Record). It claims that this deed was sufficient to vest title to the gas. It now takes the ambiguous and fallacious position that a similar deed conveying title in like manner was not sufficient to divest it of the gas.

The laws of Pennsylvania are clear and certain as to the principles involved, and these principles of state law are binding in so far as they determine the property rights of the parties.

II. PETITIONER HAS NO STANDING TO IMPEACH THE VALIDITY OF THE DEED OF ITS LAWFUL REPRESENTATIVE TO THE COMMONWEALTH

The lands in question were sold to the Commonwealth of Pennsylvania in 1937 and continued in possession of the Commonwealth from that time until the present. The Receiver LeRoy W. Smith was discharged, and the Penfield Coal and Coke Company went out of existence. No one questioned the right of the Commonwealth to complete possession and the exclusive exercise of dominion and control of all interests in the lands, except for the coal and other minerals that has been previously conveyed in prior deeds, until 1957, when Cecil B. Highland was appointed Trustee of Penfield Coal and Coke Company, by the Court of Common Pleas of Clearfield County.

It is the contention of the Commonwealth of Pennsylvania that no question of any unauthorized act by the original receiver LeRoy W. Smith, has been properly raised in the lower courts, and that if such question had been raised, it would have been improper and constituted a collateral attack on proceedings and a decree of the U. S. District Court, as well as an attempt of petitioner to impeach its own deed. *Stanley et al. v. Graham Production Company, Incorporated*, 83 F. 2nd 489, 57 S. Ct. 115 (1936).

It is respectfully submitted the petitioner has no standing in his attempt to attack a ruling of the U. S.

District Court, after 26 years of uninterrupted possession and the exclusive exercise of dominion and control of the lands and gas rights in question by the Commonwealth. He is attempting to do by indirection what he could not do directly.

CONCLUSION

In conclusion it can be stated that the property rights of the parties consisting of land in Pennsylvania have been determined by principles of Pennsylvania law as established by the Supreme Court of Pennsylvania. Therefore, the case presents no substantial federal question. It is also apparent that there is no basis for the petitioner to attack in these proceedings, the ruling of the Federal District Court, that approved the sale and confirmed the deed.

ROBERT C. DERRICK
Assistant Attorney General
JOHN SULLIVAN
Deputy Attorney General
ANNE X. ALPERN
Attorney General
Counsel for Respondent